

a Saturday, Sunday nor a Federal holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(e) *Extensions of time to commence judicial review.* The Director may extend the time for filing an appeal or commencing a civil action (1) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (2) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

[47 FR 47382, Oct. 26, 1982, as amended at 53 FR 16414, May 9, 1988; 54 FR 29554, July 13, 1989; 54 FR 34901, Aug. 22, 1989; 58 FR 54503, Oct. 22, 1993; 68 FR 14337, Mar. 25, 2003; 68 FR 55769, Sept. 26, 2003]

PETITIONS AND ACTION BY THE DIRECTOR

§2.146 Petitions to the Director.

(a) Petition may be taken to the Director:

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by §2.63(b);

(2) In any case for which the Act of 1946, or title 35 of the United States Code, or this part of title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or reviewed by the Director;

(3) To invoke the supervisory authority of the Director in appropriate circumstances;

(4) In any case not specifically defined and provided for by this part of title 37 of the Code of Federal Regulations;

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any require-

ment of the rules not being a requirement of the Act of 1946.

(b) Questions of substance arising during the ex parte prosecution of applications, including, but not limited to, questions arising under sections 2, 3, 4, 5, 6 and 23 of the Act of 1946, are not considered to be appropriate subject matter for petitions to the Director.

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the fee required by §2.6. Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in *ex parte* cases, proof in the form of affidavits or declarations in accordance with §2.20, and any exhibits, shall accompany the petition.

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

(e)(1) A petition from the grant or denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the grant or denial of the request. A petition from the grant of a request shall be served on the attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition shall be made as provided by §2.119(a). The potential opposer or the applicant, as the case may be, may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, with proof of service as provided by §2.119(a). No further paper relating to the petition shall be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board shall be filed within thirty days after the date of mailing of the order from which relief is requested. Any brief in response to the petition shall be filed, with any supporting exhibits, within fifteen days from the

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date of service of the petition. Petitions and responses to petitions, and any papers accompanying a petition or response, under this subsection shall be served on every adverse party pursuant to § 2.119(a).

(f) An oral hearing will not be held on a petition except when considered necessary by the Director.

(g) The mere filing of a petition to the Director will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(b) and 2.65 are applicable to an ex parte application.

(h) Authority to act on petitions, or on any petition, may be delegated by the Director.

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;

(2) After registration, check the status of the registration every six months from the filing of an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and

(3) If the status check reveals that the Office has not received a document filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must promptly request corrective action.

(j) If the Director denies a petition, the petitioner may request reconsideration, if the petitioner:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

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(2) Pays a second petition fee under § 2.6.

[48 FR 23142, May 23, 1983; 48 FR 27226, June 14, 1983, as amended at 63 FR 48100, Sept. 9, 1998; 64 FR 48924, Sept. 8, 1999; 68 FR 55769, Sept. 26, 2003]

§ 2.147 [Reserved]

§ 2.148 Director may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Director.

CERTIFICATE

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue a certificate stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of sections 8 and 71 of the Act will accompany the certificate.

[68 FR 55769, Sept. 26, 2003]

PUBLICATION OF MARKS REGISTERED UNDER 1905 ACT

AUTHORITY: Secs. 2.153 to 2.156 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

§ 2.153 Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with § 2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant